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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,851	03/23/2005	Philip C. Roy	2870(203-3505)	6326
7590 Paul R Audet Tyco Healthcare Group United States Surgical Senior Patent &Trademark Counsel 150 Glover Avenue Norwalk, CT 06856	02/28/2007		EXAMINER TRUONG, THANH K	
			ART UNIT 3721	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/28/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)
	10/528,851	ROY, PHILIP C.
	Examiner	Art Unit
	Thanh K. Truong	3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 November 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9 and 19 is/are pending in the application.
- 4a) Of the above claim(s) 10-18 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-9 and 19 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 23 March 2005 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>11-30-06</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

1. This action is in response to applicant's amendment received on November 30, 2006.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Viola et al. (5,954,259).

Viola et al. discloses an apparatus comprising:

a housing having a fixed handle (20) - It is construed that the housing in Viola et al. comprises the frame portions that cover all components of the apparatus (10) – see figure 1;

a clamping handle (44) mounted to the housing and selectively movable relative to the fixed handle from a first position in spaced relation relative to the fixed handle to a second position closer to the fixed handle to actuate the clamping of tissue;

an adapter yoke (76) which translates within the housing upon actuation of the clamping handle, the adapter yoke mechanically cooperating with a lead screw (78) disposed within the housing to actuate the tool assembly to clamp tissue;

a drive assembly (22) disposed within the housing, the drive assembly including a shaft (42), the shaft being mechanically engaged with the lead screw (78) disposed

within the housing such that upon selective activation of the drive assembly, the shaft rotates said lead screw to advance a roll nut (94) distally along the lead screw to force a firing piston into a tool assembly when mounted on the housing to deform the surgical fasteners through and fastening the tissue (figures 9 & 10).

Regarding claims 8 and 9, wherein the stapler includes a switch for reversing the rotation of the shaft of the drive assembly upon activation thereof (column 5, lines 7-12), and the shaft (42) rotates upon activation of the drive assembly (22), which in turn rotates the lead screw (78).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Viola et al. (5,954,259) in view of Green et al. (US 2002/0096550).

As discussed above in paragraph 3 of this office action, Viola et al. discloses the claimed invention, but does not expressly disclose that: the drive assembly is pneumatic powered, the safety mechanism as describe in claims 5 and 7.

It is old and well known in the art to employ a pneumatic drive assembly in place of electrical or hydraulic drive assembly and it is also well known to have a safety mechanism in a surgical stapler to prevent accidental triggering of the device.

Green et al. discloses a surgical stapler that comprising: a pneumatic drive assembly (68) to provide a simple and compact drive system, and a safety mechanism to prevent from accidentally firing of the tool (page 6, [0102]).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified Viola et al. apparatus by incorporating the pneumatic drive assembly for a more compact and simple drive system and the safety mechanism as taught by Green et al..

6. Claims 3, 4 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Viola et al. (5,954,259) in view of Mizzy et al. (3,859,996).

As discussed above in paragraph 3 of this office action, Viola et al. discloses the claimed invention, but does not expressly disclose that the drive assembly is selectively variable to regulate the speed at which the surgical fasteners are deformed, and the stapler comprises a pressure sensitive trigger.

Mizzy et al. discloses an apparatus that comprises a pressure sensitive trigger mechanism (abstract) that provides a means to effectively controlling the drive assembly.

Mizzy et al. demonstrates that it is old and well known in the art to use the pressure sensitive trigger to activate and regulate the drive assembly of an apparatus so that drive assembly is selectively variable to regulate the speed at which the surgical fasteners are deformed, and the stapler comprises a pressure sensitive trigger (as recited in claims 3 and 4) to provide a more accurately control of the stapler device.

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified Viola et al. apparatus by incorporating the pressure sensitive trigger mechanism as taught by Mizzy et al. so that it comprises the drive assembly that is selectively variable to regulate the speed at which the surgical fasteners are deformed, and the stapler comprises a pressure sensitive trigger mechanism to provide a more responsive and more precise surgical instrument.

Response to Arguments

7. Applicant's arguments filed November 30, 2006 have been fully considered but they are not persuasive.
8. In response to the Applicant's argument that "*Viola does not teach or suggest that these elements [adapter yoke (76), a lead screw (78) and a roll nit (94)] operatively translate within the housing*", this is not found persuasive, because as mentioned above in paragraph 3 of this office action, and the examiner maintains that the housing in Viola et al. comprises the frame portions that cover all components of the apparatus (10), in other words, the housing includes all cover portions for holding or protecting the mechanical parts of the apparatus (10) – see figure 1.

9. In response to the Applicant's argument that:

"Viola does not disclose that drive assembly is pneumatic powered. However, the Office Action attempts to cure the above deficiency by asserting that employing a pneumatic drive assembly in place of electrical or hydraulic drive assembly is old and well known. Applicant's respectfully invite the Examiner to introduce relevant art in Applicant's field of

endeavor, i.e., surgical staplers, in support of this assertion" (emphasis added),

this is not found persuasive, because the following reasons:

Firstly, Green et al. (US 2002/0096550) is relied upon to demonstrate that it is old and well known in the art to employ a pneumatic drive assembly in place of electrical or hydraulic drive assembly.

Secondly, the apparatus in Green et al. (US 2002/0096550) is a surgical stapler (please see the reference).

10. Applicant's arguments with respect to claims 3 and 4 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

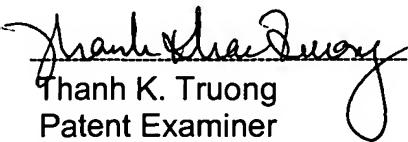
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K. Truong whose telephone number is 571-272-4472. The examiner can normally be reached on Mon-Thru 8:00AM - 6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Thanh K. Truong
Patent Examiner
February 23, 2007.